

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

ORDER

Criminal No. 04-279 ADM/RLE

John Paul Engelking,

Defendant.

John Paul Engelking, *pro se* Defendant.

This matter is before the undersigned United States District Judge on John Paul Engelking's ("Defendant") Rule 35(b) Motion [Docket No. 43]. For the reasons set forth below, Defendant's Motion is denied.

The Defendant was sentenced on June 28, 2005 to 15 months in the custody of the Bureau of Prisons [Docket No. 42]. State proceedings were also pending. Shortly after the federal sentencing, the state court sentenced the Defendant and he is currently incarcerated in the Minnesota State Correctional Facility in St. Cloud.

In his Motion, Defendant states that he was transferred to the custody of the Minnesota Department of Corrections and required to serve his state sentence before his federal sentence. Therefore, according to the Defendant, he will be ineligible for a work release/home monitoring program which would have allowed him to regain custody of his three minor children after 16 months rather than 28 months. Defendant asks to serve his federal and state sentences concurrently.

Federal Rule of Criminal Procedure 35 allows a court to correct technical errors in a sentence or reduce a sentence on the government's motion. A motion under Rule 35(a) must be brought within seven days after sentencing to correct "arithmetical, technical, or other clear error." Fed. R. Crim. P. 35(a). Defendant's motion is not timely under Rule 35(a), nor does it request such technical correction. A motion under Rule 35(b) may be made within one year of sentencing, but only upon motion by the government and if the defendant provided substantial assistance in investigating or prosecuting another person after sentencing. Fed. R. Crim. P. 35(b). Here, the government has not brought the motion or joined in Defendant's motion. Finally, Rule 35 does not allow a court to revise a sentence such that it is served concurrently with a state sentence. Therefore, the Court must deny Defendant's Rule 35(b) motion.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Defendant's 35(b) Motion [Docket No. 43] is **DENIED**.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: October 27, 2005.